

**Written Testimony on Senate Bill 308
Senate Judiciary Committee
May 20, 2020
Holly Holtzen, AARP Ohio**

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Committee,

On behalf of AARP Ohio, thank you for the opportunity to address our organization's concerns as an opponent of Senate Bill 308. AARP is a nonpartisan, social mission organization with an age 50+ membership of nearly 37 million nationwide, and approximately 1.5 million members here in Ohio. We oppose SB 308 because we believe that individuals, including those who have been injured or neglected in nursing homes and other facilities, must be able to protect their rights in courts. Broad waivers of liability such as those proposed in SB 308 create barriers to obtain redress when individuals are harmed or injured. AARP has long fought for the rights of residents in nursing homes and other long-term care (LTC) facilities to ensure their health, safety, quality of care, and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected, or abused.

Nursing homes and other LTC facilities play an important role in American's long-term services and supports (LTSS) system. There are 71,894 nursing home residents in Ohio. During this time of pandemic, nursing homes and other LTC facilities face unprecedented challenges, and tragically, a total of 276 people have died in Ohio's LTC facilities in just the past two weeks alone. The death totals at these facilities represent 29% of the total COVID-19 related deaths reported by the state since early March. Given the lack of reporting of cases and deaths prior to April 15, we must assume this number is actually higher. Without increased protective equipment, testing, and treatment protocols, millions more will contract the coronavirus and thousands more people could die. While there may be some circumstances beyond facilities' control for which they should not be held responsible, it is essential that long-term care providers, as well as health care providers more broadly, remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity for redress.

Given that most inspections of nursing homes have been suspended, family in-person visits are effectively prohibited excepted in limited circumstances, and in-person long-term care Ombudsman visits are similarly restricted, there are fewer eyes observing what is happening in facilities. Residents of nursing homes and other LTC facilities may be unable to advocate for themselves and now have limited access to people who can advocate on their behalf. This lack of oversight is alarming, and requires us to ensure that, when all else fails, residents and their families will still have access to the courts to seek redress.

Ohio should not strip away the rights and protections of residents. Nursing homes and other LTC facilities should know they will continue to be held responsible for providing the level of quality care that is required of them, and for which they are being compensated. This also incentivizes facilities to self-correct by addressing problems to improve care before such problems mature to the point of requiring legal remedy from residents and their families. No family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option.

Though we feel compelled to register our objections as part of the official committee record, we recognize the committee's desire to address the unusual nature of the circumstances in which we find ourselves amid the current pandemic. Should the committee decide to proceed with immunity, we believe the amendments put forth by the Ohio Association of Justice would strengthen the bill and better protect nursing home residents, their families, and consumers. Specifically, we support their amendments to address the following items:

- Any immunity should be limited in scope so that it would apply only to acts or omissions that are substantially casually related to COVID-19;
- Any afforded immunity should be limited in duration to the period of the exceptional circumstances with clearly identified beginning and end dates and defined by a state governmental authority;
- Limit the immunity to negligent conduct. Recklessness is the conscious disregard of safety and such disregard, especially during dangerous times when nursing home residents need protection the most, should not be immunized;
- Maintain the current civil standard for burden of proof as "by a preponderance of the evidence." Increasing the burden of proof (to "clear and convincing") while also lowering the standard of care (eliminating the negligence) creates an unnecessary double hurdle to establish legitimate claims; and

- Maintain “wrongful death” as an allowable action. Article 1, Section 19a of the Ohio Constitution states, “The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.”

We believe that these proposed amendments would mitigate some of the most significant risks associated with this legislation. AARP Ohio appreciates your consideration of these views and, should the committee determine that some level of immunity must be granted, we urge you to accept these amendments supported by the Ohio Association of Justice and AARP Ohio. Families all across Ohio are looking to you to protect the health and safety of their loved ones living in nursing homes and other residential care facilities. If you have questions or require additional information, please feel free to contact our office.